

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00156-MR-WCM**

KEPHART CONSTRUCTION)
COMPANY and MARK KEPHART,)

Plaintiffs,)

vs.)

RONALD ACKLEY and)
DEPARTMENT OF VETERAN)
AFFAIRS,)

Defendants.)

ORDER

THIS MATTER is before the Court on the Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) by Defendant Department of Veterans Affairs (“VA”) [Doc. 4] and the Magistrate Judge’s Memorandum and Recommendation [Doc. 7] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the VA's motion and to submit a recommendation for its disposition.

On December 27, 2019, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support

of a recommendation regarding the VA's motion. [Doc. 7]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the VA's Motion to Dismiss should be granted and this case should be remanded.

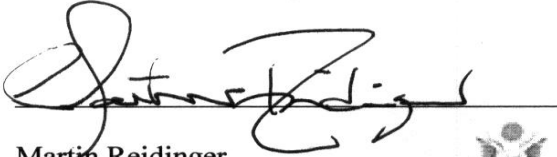
IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 7] is **ACCEPTED**; the VA's Motion to Dismiss [Doc. 4] is **GRANTED**; and the Plaintiffs' claims against the Department of Veteran Affairs are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that, in the exercise of its discretion, the Court declines to exercise supplemental jurisdiction over the Plaintiffs' remaining state law claim. Accordingly, this matter is hereby **REMANDED** to the General Court of Justice, District Court Division of Macon County,

North Carolina, for further proceedings with respect to the Plaintiffs' state law claim against Defendant Ronald Ackley.

IT IS SO ORDERED.

Signed: January 15, 2020


Martin Reidinger
United States District Judge

